

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:10-CV-0585-RJC-DCK**

ANGELIQUE LANDRY,

Plaintiff,

v.

STATE OF NORTH CAROLINA, COUNTY
OF MECKLENBURG, MECKLENBURG
COUNTY SHERIFF'S OFFICE, CHIPP
BAILEY, CITY OF CHARLOTTE,
CHARLOTTE-MECKLENBURG POLICE
DEPARTMENT, RODNEY MONROE, M.L.
RORIE, PRESBYTERIAN HOSPITAL
MATTHEWS, and MICHAEL LEE ROBERTS,

Defendants.

**MEMORANDUM AND
RECOMMENDATION**

THIS MATTER IS BEFORE THE COURT on Defendant Michael Roberts' "Motion To Dismiss Plaintiff's Complaint" (Document No. 19) filed December 22, 2010. This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b), and immediate review is appropriate. Having carefully considered the motion, the record, and the applicable authority, the undersigned will respectfully recommend that the motion be denied.

Defendant Michael Roberts' ("Roberts") pending "motion" consists of two sentences:

Defendant Michael L. Roberts files this Motion to Dismiss Plaintiff's complaint. Reasons for the request to dismiss were included in my answer to the complaint.

(Document No. 19, p.1).

As such, Roberts' motion fails to meet the requirements of the Local Rules and should be denied. The Local Rules of this Court provide in pertinent part that "[b]riefs shall be filed contemporaneously with the motion" and that "[m]otions to dismiss contained in answers to

complaints . . . are considered by the Court to be preserved. A party wishing to have decided any preserved motion shall file a separate motion **and supporting brief.**” Local Rule 7.1(C) (emphasis added).

RECOMMENDATION

FOR THE FOREGOING REASONS, the undersigned respectfully recommends that Defendant Michael Roberts’ “Motion To Dismiss” (Document No. 19) be **DENIED** without prejudice to re-file.

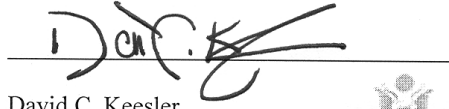
TIME FOR OBJECTIONS

The parties are hereby advised that pursuant to 28 U.S.C. § 636(b)(1)(C), and Rule 72 of the Federal Rules of Civil Procedure, written objections to the proposed findings of fact, conclusions of law, and recommendation contained herein may be filed within fourteen (14) days of service of same. Responses to objections may be filed within fourteen (14) days after service of the objections. Fed.R.Civ.P. 72(b)(2). Failure to file objections to this Memorandum and Recommendation with the District Court constitutes a waiver of the right to *de novo* review by the District Court. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005). Moreover, failure to file timely objections will preclude the parties from raising such objections on appeal. Diamond, 416 F.3d at 316; Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003); Snyder v. Ridenhour, 889 F.2d 1363, 1365 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 147-48 (1985), reh'g denied, 474 U.S. 1111 (1986).

The Clerk is directed to send copies of this Memorandum and Recommendation to the *pro se* Plaintiff, counsel for Defendants, the *pro se* Defendant, and the Honorable Robert J. Conrad, Jr.

IT IS SO RECOMMENDED.

Signed: December 28, 2010

A handwritten signature in black ink, appearing to read "D.C. Keesler", written over a horizontal line.

David C. Keesler
United States Magistrate Judge

